

Practice Update

Initial Form N-PX Filing Deadline for Institutional Investment Managers Approaching

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Investment managers required to file Form N-PX pursuant to Rule 14Ad-1 of the Securities Exchange Act of 1934, as amended, will face their initial Form N-PX filing deadline on August 31, 2024. Although the filing obligation is more limited with respect to managers who do not vote proxies on behalf of their clients, such managers are not exempt from the filing requirement.

Adopted by the U.S. Securities and Exchange Commission (the SEC) in November 2022, Rule 14Ad-1 requires all “Institutional Investment Managers” required to file Form 13F with the SEC to also file Form N-PX.^[1] “Institutional Investment Manager” is defined as any person, other than a natural person, investing in or buying and selling securities for its own account as well as any person exercising investment discretion with respect to the account of any other person.^[2]

While registered investment companies (such as mutual funds and exchange-traded funds) have long been required to file Form N-PX, it is important to note that Institutional Investment Managers are not subject to the same reporting requirements as advisers to registered funds under Rule 14Ad-1. Rule 14Ad-1 only requires that Institutional Investment Managers report their say-on-pay votes, which

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include any votes with respect to the approval of executive compensation (including golden parachutes in connection with mergers or acquisitions), on Form N-PX.[3]

The SEC has provided a two-part test to assist Institutional Investment Managers in determining whether they “exercised voting power” over a security and are thus required to report a say-on-pay vote on Form N-PX. The first prong of the test is whether the Institutional Investment Manager has the power to vote or direct the voting of the security. The second prong of the test is whether the Institutional Investment Manager exercises such power to influence a voting decision for the security. The SEC further explained that “voting power could exist or be exercised either directly or indirectly by way of a contract, arrangement, understanding, or relationship.”[4] Additionally, the SEC has taken the position that “multiple parties could both have and exercise voting power over the same securities ... even where [an Institutional Investment Manager] is not the sole decision-maker.”[5] Importantly, the SEC clarifies that an Institutional Investment Manager still exercises its voting power even when it elects to **not vote** on a say-on-pay matter.[6]

Importantly, the reporting obligation is limited for Institutional Investment Managers who have a disclosed policy of not voting proxies (such as on Form ADV) and who in fact have not voted proxies during the reporting period. Such an Institutional Investment Manager will need to complete a notice report that includes (i) a designation on Form N-PX’s cover page that the manager has a clearly disclosed policy of not voting, and did not vote, on any proxy voting matters as well as (ii) the required signatures. [7] In such instances, the Institutional Investment Manager will not need to report any information on a security-by-security basis.[8]

The below table provides a high-level overview of the requirements of Rule 14Ad-1 and the related deadlines. This is not a substitute for legal advice,

and you should consult with your attorney to determine how the new rule applies to your specific circumstances. However, this guide can help you understand the new requirements and potentially help you determine if you may need to file Form N-PX.

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| Effective Date: | July 1, 2024 |
| Initial Filing Deadline: | August 31, 2024 |
| Initial Reporting Period: | July 1, 2023, through June 30, 2024 |
| Who Must File Form N-PX: | |
| <i>i. Registered Funds</i> | <p>Mutual funds, exchange-traded funds (ETFs), and certain other registered investment companies.</p> <p>Rule 14Ad-1 requires more detailed information on Form N-PX regarding proxy votes, including using the issuer's proxy card language and categorizing votes under specific</p> |

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| | <p>topics. Filers will need to disclose the number of shares voted, instructed to be voted, and loaned but not recalled for voting. Additionally, Form N-PX filings are now required to be filed in XML format.</p> |
| <p><i>ii. Institutional Investment Managers</i></p> | <p>Institutional Investment Managers required to file reports on Form 13F.[9]</p> <p>Filers will need to report all “say-on-pay” votes on Form N-PX. Say-on-pay votes involve approving executive compensation matters.</p> |
| <p>What Events Trigger Reporting:</p> | <p>The rule provides a two-part test to determine if a person must report: (i) does the person have the power to vote or direct the voting of a security, and (ii) does the person exercise this power to influence a voting decision for the security?</p> |

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| | A person may exercise voting power either directly or indirectly. Even if a person is not the sole decision-maker, such person may still have a reporting obligation. |
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For additional information please contact Paul Foley, chair of Akerman's Investment Management Practice Group.

[1] See Sec. & Exch. Comm'n, Final Rule, Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers (Nov. 2, 2022), *available at* <https://www.sec.gov/files/rules/final/2022/33-11131.pdf> (Adopting Release). Institutional Investment Managers that exercise investment discretion over \$100 million or more of section 13(f) securities must report their ownership of such securities on Form 13F. Section 13(f) securities generally consist of equities and ETFs. The SEC publishes a list of such securities quarterly at <https://www.sec.gov/divisions/investment/13flists>.

[2] 15 U.S.C. § 78m(f)(6)(A).

[3] See Adopting Release at 12.

[4] *Id.* at 14.

[5] *Id.*

[6] *Id.* at 15.

[7] *Id.* at 22.

[8] *Id.*

[9] Currently, any Institutional Investment Manager that exercises investment discretion over \$100 million or more of section 13(f) securities is required to report securities ownership on Form 13F.

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.